

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER, as Administratrix
MOLLIE BINDER
NATHAN BINDER

Plaintiffs

-vs-

Complaint

EILEEN STEWART, MS, CNM, CPM
BUFFALO MIDWIFERY SERVICES PLLC,
KATHARINE V. MORRISON, MD
BUFFALO WOMENSERVICES LLC
BUFFALO GYN WOMENSERVICES, INC.
GINA VARNEY dba BUFFALO DOULA COLLECTIVE

Defendants.

Plaintiffs, by and through their attorneys, DEMPSEY & DEMPSEY, for their
complaint against the defendants in the above-captioned action, state as follows:

1. That at all times hereinafter mentioned, plaintiffs are residents of the State of New York, County of Erie.
2. That Mollie Binder was appointed Administratrix of the Estate of Baby Binder and was issued Letters of Administration on the 10th day of November 2016 by the Surrogate's Court of Erie County.
3. That upon information and belief and at all times hereinafter mentioned, the defendant, Eileen Stewart MS, CNM, CPM, was and is a certified nurse midwife licensed to practice medicine in the State of New York with offices at 289 Summer Street, Buffalo, NY 14222.

4. That upon information and belief and at all times hereinafter mentioned, the defendant, Buffalo Midwifery Services PLLC, is a professional service limited liability company organized and existing under the laws of the State of New York with offices at 289 Summer Street, Buffalo, NY 14222.

5. That upon information and belief and at all times hereinafter mentioned, the defendant, Katharine V. Morrison, MD, was and continues to be a physician duly licensed to practice medicine in the State of New York with offices at 2500 Main Street, Buffalo, NY 14214.

6. That upon information and belief and at all times hereinafter mentioned, the defendant, Buffalo Womenservices LLC, is a limited liability company organized and existing under the laws of the State of New York with offices at 2500 Main Street, Buffalo, NY 14214.

7. That upon information and belief and at all times hereinafter mentioned, the defendant, Buffalo GYN Womenservices, Inc., is a corporation organized and existing under the laws of the State of New York with offices at 2500 Main Street, Buffalo, NY 14214.

8. That upon information and belief and at all times hereinafter mentioned, the defendant, Gina Varney, dba Buffalo Doula Collective, is a birth doula with offices located 140 Elmwood Avenue, Buffalo, NY 14201.

9. That decedent, Baby Binder, came under the care and treatment of defendants on or about November 28, 2014.

10. That the care and treatment rendered to Baby Binder by the defendants was negligently, carelessly and unskillfully performed.

11. That solely due to the negligence of the defendants, Baby Binder, was injured and died, experiencing great conscious pain and suffering, and his estate has suffered monetary damages in an amount substantially in excess of the jurisdictional limits of all lower courts.

**FOR A SECOND, SEPARATE AND DISTINCT
CAUSE OF ACTION**

12. That plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 11 with full force and effect the same as if each were more fully set forth herein.

13. That due to the negligence of the defendants, Baby Binder died on November 28, 2014, and left surviving his mother, Mollie Binder, and his father, Nathan Binder, who have suffered damages for the wrongful death of decedent in an amount substantially in excess of the jurisdictional limits of all lower courts.

**FOR A THIRD, SEPARATE AND DISTINCT
CAUSE OF ACTION**

14. That plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 13 with full force and effect the same as if each were more fully set forth herein.

15. That plaintiffs, Mollie Binder and Nathan Binder, due to the negligence of the defendants, have been deprived of the comfort, society, services and companionship of their son, Baby Binder, and have suffered damages of a derivative nature in an amount substantially in excess of the jurisdictional limits of all lower courts.

FOR A FOURTH, SEPARATE AND DISTINCT

CAUSE OF ACTION

16. That plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 15 with full force and effect the same as if each were more fully set forth herein.

17. That plaintiff, Mollie Binder, due to the negligence of the defendants, suffered emotional distress at the birth of Baby Binder and has sustained damages in an amount substantially in excess of the jurisdictional limits of all lower courts.

FOR A FIFTH, SEPARATE AND DISTINCT

CAUSE OF ACTION

18. That plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 17 with full force and effect the same as if each were more fully set forth herein.

19. That plaintiff, Nathan Binder, due to the negligence of the defendants, has been deprived of the comfort, society, services and companionship of his wife, Mollie Binder, and has suffered damages of a derivative nature in an amount substantially in excess of the jurisdictional limits of all lower courts.

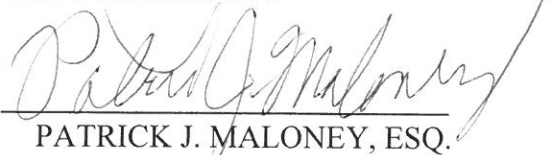
WHEREFORE, plaintiffs demand judgment against the defendants in the first, second and third causes of action in an amount substantially in excess of the jurisdictional limits of all lower courts; together with the costs and disbursements of this action.

Date: November 23, 2016
Buffalo, New York

Yours, etc.,

DEMPSEY & DEMPSEY

By:



PATRICK J. MALONEY, ESQ.

Attorneys for plaintiffs

561 Franklin Street

Buffalo, New York 14202

(716) 885-8645

AHT/smp

DEMPSEY & DEMPSEY / ATTORNEYS AT LAW / BUFFALO, NEW YORK 14202

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER as Administratrix,
MOLLIE BINDER and NATHAN BINDER,

Plaintiffs,

ANSWER

vs.

Index No.: 813232/2016

EILEEN STEWART, MS, CNM, CPM,
BUFFALO MIDWIFERY SERVICES, PLLC,
KATHARINE V. MORRISON, MD,
BUFFALO WOMENSERVICES, LLC,
BUFFALO GYN WOMENSERVICES, INC., and
GINA VARNEY d/b/a BUFFALO DOULA COLLECTIVE,

Defendants.

Defendants, EILEEN STEWART, MS, CNM, CPM and BUFFALO MIDWIFERY SERVICES, PLLC, by their attorneys, THE TARANTINO LAW FIRM, LLP, for their answer to the complaint herein, allege as follows upon information and belief:

FIRST: Admit so much of paragraph 8 of the plaintiffs' complaint as same alleges that Gina Varney is a doula but deny knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph.

SECOND: Admit the allegations contained in paragraphs 3, 4, 5 and 9 of plaintiffs' complaint.

THIRD: Deny so much of paragraph 13 of the plaintiffs' complaint as same alleges that the death of "Baby Binder" was due to the negligence of the answering defendants or that said answering defendants caused Mollie or Nathan Binder to have suffered damages for the "wrongful death" of Baby Binder. These answering defendants deny knowledge or information sufficient to form a belief as to the allegations made in said paragraph as to the co-defendants.

FOURTH: Deny so much of paragraph 15 of the plaintiffs' complaint as same alleges that Mollie and Nathan Binder have been deprived of the comfort, society, services and companionship of their son and have suffered damages of a derivative nature due to the negligence of the answering defendants but deny knowledge or information sufficient to form a belief as to the co-defendants.

FIFTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 2, 6 and 7 of plaintiffs' complaint.

SIXTH: Deny the allegations contained in paragraphs 10, 11, 17 and 19 of plaintiffs' complaint as they may pertain to the answering defendants, but deny knowledge or information sufficient to form a belief as to the remaining allegations of said paragraphs as they pertain to the co-defendants.

SEVENTH: Repeat and reallege the admissions and denials as they relate to paragraphs 1 through 17 of plaintiffs' complaint, as realleged in paragraphs 12, 14, 16 and 18 of plaintiffs' complaint with the same force and effect as if fully set forth herein.

EIGHTH: Deny each and every other allegation contained in plaintiffs' complaint except as the same may be otherwise admitted herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

NINTH: To the extent that plaintiffs' alleged injuries and damages were caused or contributed to by the negligence on the part of others, these answering defendants are not liable.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

TENTH: Upon trial, it may appear that some or all of the damages claimed by plaintiff was brought about or contributed to by reason of plaintiff's own acts, physical condition,

disease or illness, actions, negligence, and/or assumption of risk; if so, plaintiff's damages, if any, must be diminished accordingly.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

ELEVENTH: In the event that the plaintiffs recover damages in this action which have been paid or are payable by a collateral source, the answering defendants will seek a collateral source offset pursuant to Article 45 of the CPLR.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

TWELFTH: In the event that the plaintiffs give a release or a covenant not to sue or not to enforce a judgment to one or more persons claimed to be liable for the same injury alleged in the plaintiffs' complaint, the answering defendants will seek an offset pursuant to §15-108 of the General Obligations Law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

THIRTEENTH: The answering defendants deny any liability on their part, but if they are found liable to the plaintiffs, then such liability is limited by CPLR 1601, *et seq.*

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

FOURTEENTH: The plaintiffs' complaint should be dismissed for failure to file and serve a certificate of merit as required by CPLR 3012-a.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

FIFTEENTH: Upon information and belief, the plaintiffs lack the capacity to sue this action.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

SIXTEENTH: The answering defendants reserve the right to amend this answer and to assert additional defenses upon ascertaining more definite facts during and upon completion of discovery and investigation.

**THE DEFENDANTS, EILEEN STEWART, MS, CNM, CPM and
BUFFALO MIDWIFERY SERVICES, PLLC, AS A CROSS-CLAIM
ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:**

SEVENTEENTH: That the relative culpability of each defendant who is or may be liable for the damages alleged by the plaintiffs in this action should be determined in accordance with Article 14 of the CPLR, and the equitable share of each defendant liable for contribution should be determined in accordance with the relative culpability of each such person, if any; furthermore, in the alternative, the defendants, EILEEN STEWART, MS, CNM, CPM and BUFFALO MIDWIFERY SERVICES, PLLC, should be completely indemnified by the proper co-defendant or co-defendants in the event they are found to be liable to plaintiffs.

WHEREFORE, defendants, EILEEN STEWART, MS, CNM, CPM and BUFFALO MIDWIFERY SERVICES, PLLC, demand judgment as follows:

1. Dismissing the complaint herein;
2. That the plaintiffs' damages be diminished in the proportion which the culpable conduct attributable to the plaintiffs bear to the culpable conduct which caused the damages;
3. In the event plaintiffs recover a verdict herein, that the court apportion the various culpability of the defendants between them pursuant to Article 14 of the CPLR or that the answering defendants should be completely indemnified by the co-defendants; and

4. For such other, further and different relief as may seem just, equitable and proper, together with the costs and disbursements of this action.

Dated: Buffalo, New York
January 27, 2017

THE TARANTINO LAW FIRM, LLP

By: 
Brian J. Weidner, of counsel
Attorneys for Defendants
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Buffalo Midwifery Services, PLLC
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TO: Catherine Dempsey, Esq.
DEMPSEY & DEMPSEY
Attorneys for Plaintiffs
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cc: James E. Eagan, Esq.
FELDMAN KIEFFER, LLP
Attorneys for Co-Defendants
Katharine V. Morrison, M.D., Buffalo Womenservices, LLC
and Buffalo GYN Womenservices, Inc.
110 Pearl Street, Suite 400
Buffalo, New York 14202
(716) 852-5875

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER, as Administratrix,
MOLLIE BINDER, and
NATHAN BINDER

ANSWER

Plaintiff,

vs.

Index No.: 813232/2016

EILEEN STEWART, MS, CNM, CPM,
BUFFALO MIDWIFERY SERVICES, PLLC,
KATHARINE V. MORRISON, M.D.,
BUFFALO WOMENSERVICES LLC,
BUFFALO GYN WOMENSERVICES, INC., and
GINA VARNEY d/b/a BUFFALO DOULA COLLECTIVE,

Defendants.

Defendant, **BUFFALO GYN WOMENSERVICES, INC.**, by its attorneys, Feldman Kieffer, LLP, as and for an Answer to the Plaintiffs' Complaint, alleges upon information and belief, as follows:

1. Admits the allegations contained in paragraphs 5, 6, and 7 of the Complaint.
2. Denies the allegations contained in paragraphs 9, 10, 11, 13, 15, 17, and 19 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 2, 3, 4, and 8 of the Complaint, and therefore denies the same.
4. In response to paragraphs 12, 14, 16, and 18 of the Complaint, repeats and realleges each and every response hereto, as if fully set forth herein.
5. Denies each and every other remaining allegation in the Complaint not hereinbefore

specifically admitted or otherwise denied.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. The Complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. The recoverable damages, if any, should be diminished to the extent the Plaintiffs or decedent may have failed to mitigate their damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Liability for non-economic loss is limited by the provisions of Article 16 of the New York CPLR.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. All or part of the cost of the Plaintiffs' or decedent's medical care, loss of earnings or other economic loss may have been paid, replaced or indemnified in whole or in part from collateral sources or with reasonable certainty, will be replaced or indemnified in the future from such collateral sources and to that extent, this Defendant requests that in the event the Plaintiffs recover any judgment herein, that such amounts as have been or may be recovered in whole or in part from collateral sources be determined by the court and the amounts the Plaintiffs recover be reduced by said amounts.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. That the injuries as alleged in the Complaint were caused in whole or in part or were contributed to by the culpable conduct of the Plaintiffs and/or decedent and without any intent, negligence, fault or want of care on the part of this Defendant, and that the damages are to be diminished by the portion of culpable conduct attributable to the Plaintiffs and/or the decedent.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. Should it be held that Article 14 of the New York CPLR could apply to any claim being made by the Plaintiffs herein, the Defendant requests that the relative culpability of each person who is or may be liable to contribute to any liability for the damages alleged by the Plaintiffs in this action should be determined in accordance with the decisional and statutory law of the State of New York, in such cases made and provided; and the equitable share of each person liable for contribution should be determined and apportioned in accordance with the relative culpability of each such person, if any, pursuant to Article 14 of the New York CPLR.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. That in the event that the injuries and damages alleged in the Complaint were caused by the culpable conduct of anyone other than the Plaintiffs and/or the decedent, such damages will have been caused and brought about by the culpable conduct of persons other than this Defendant.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

13. Pursuant to Section 15-108 of the New York General Obligations Laws, the Plaintiffs' recovery, if any, from this Defendant must be reduced by the greatest of (1) any amounts actually paid by any person or entity for any of the injuries, costs, damages and expenses alleged in the Complaint; or (2) any amounts stipulated or otherwise agreed to in any release of or covenant not to sue any person or entity for any injuries, costs, damages or expenses alleged in the Complaint; or (3) the equitable share of the liability of any person or entity that has received, or hereafter receives, any release from liability or covenant not to sue with respect to any of the injuries, costs, damages and expenses alleged in the complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

14. The Defendant alleges upon information and belief that the Public Health Law,

particularly Section 2805(d), Subdivision 4, is a complete defense to any cause of action contained in the Plaintiffs' Complaint based upon alleged lack of informed consent.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

15. That in the event that the injuries and damages alleged herein, if any, were caused solely by the separate and independent culpable or other tortious conduct of the Plaintiffs, decedent, or other parties, third persons and/or entities over whom and over which this Defendant exercised no supervision or control, this Defendant should be entitled to contribution and/or indemnification.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

16. The Plaintiffs have failed to obtain personal jurisdiction over this Defendant.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

17. The Plaintiffs have failed to commence this action within the applicable Statute of Limitations and it is therefore barred.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

AND BY WAY OF CROSS-CLAIM

18. That the relative culpability of each defendant who is or may be liable for the damages alleged by the plaintiff in this action should be determined in accordance with Article 14 of the Civil Practice Law and Rules, and the equitable share of each defendant liable for contribution should be determined in accordance with the relative culpability of each such person, if any. Furthermore, in the alternative, this answering defendant should be completely indemnified by the co-defendants in the event that this defendant is found to be liable to the Plaintiffs.

WHEREFORE, the Defendant, **BUFFALO GYN WOMENSERVICES, INC.**, demands judgment:

1. Dismissing the Complaint herein;
2. That the Plaintiffs' damages be diminished in the proportion to which the culpable conduct and contributory negligence attributed to the Plaintiffs and/or decedent bears to the culpable conduct and contributory negligence which caused such damages;
3. That the equitable share of each person liable for contribution be determined and apportioned in accordance with the relative culpability of each such person, if any, pursuant to Article 14 of the CPLR, if applicable;
4. The costs and disbursements of this action; and
5. For such other and further relief which the Court deems just and proper.

Dated: December 29, 2016



James E. Eagan, Esq.
FELDMAN KIEFFER, LLP
Attorneys for Defendants
Katharine V. Morrison, M.D.,
Buffalo Womenservices, LLC, and
Buffalo GYN Womenservices, Inc.
110 Pearl Street, Suite 400
Buffalo, New York 14202
(716) 852-5875

To: Patrick Maloney, Esq.
Dempsey & Dempsey
Attorneys for Plaintiff
561 Franklin Street

Buffalo, New York 14202
(716) 885-8645

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER, as Administratrix,
MOLLIE BINDER, and
NATHAN BINDER

ANSWER

Plaintiff,

vs.

Index No.: 813232/2016

EILEEN STEWART, MS, CNM, CPM,
BUFFALO MIDWIFERY SERVICES, PLLC,
KATHARINE V. MORRISON, M.D.,
BUFFALO WOMENSERVICES LLC,
BUFFALO GYN WOMENSERVICES, INC., and
GINA VARNEY d/b/a BUFFALO DOULA COLLECTIVE,

Defendants.

Defendant, **KATHARINE MORRISON, M.D.**, by her attorneys, Feldman Kieffer, LLP,
as and for an Answer to the Plaintiffs' Complaint, alleges upon information and belief, as follows:

1. Admits the allegations contained in paragraphs 5, 6, and 7 of the Complaint.
2. Denies the allegations contained in paragraphs 9, 10, 11, 13, 15, 17, and 19 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 2, 3, 4, and 8 of the Complaint, and therefore denies the same.
4. In response to paragraphs 12, 14, 16, and 18 of the Complaint, repeats and realleges each and every response hereto, as if fully set forth herein.
5. Denies each and every other remaining allegation in the Complaint not hereinbefore specifically admitted or otherwise denied.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. The Complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. The recoverable damages, if any, should be diminished to the extent the Plaintiffs or decedent may have failed to mitigate their damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Liability for non-economic loss is limited by the provisions of Article 16 of the New York CPLR.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. All or part of the cost of the Plaintiffs' or decedent's medical care, loss of earnings or other economic loss may have been paid, replaced or indemnified in whole or in part from collateral sources or with reasonable certainty, will be replaced or indemnified in the future from such collateral sources and to that extent, this Defendant requests that in the event the Plaintiffs recover any judgment herein, that such amounts as have been or may be recovered in whole or in part from collateral sources be determined by the court and the amounts the Plaintiffs recover be reduced by said amounts.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. That the injuries as alleged in the Complaint were caused in whole or in part or were contributed to by the culpable conduct of the Plaintiffs and/or decedent and without any intent, negligence, fault or want of care on the part of this Defendant, and that the damages are to be diminished by the portion of culpable conduct attributable to the Plaintiffs and/or the decedent.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. Should it be held that Article 14 of the New York CPLR could apply to any claim

being made by the Plaintiffs herein, the Defendant requests that the relative culpability of each person who is or may be liable to contribute to any liability for the damages alleged by the Plaintiffs in this action should be determined in accordance with the decisional and statutory law of the State of New York, in such cases made and provided; and the equitable share of each person liable for contribution should be determined and apportioned in accordance with the relative culpability of each such person, if any, pursuant to Article 14 of the New York CPLR.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. That in the event that the injuries and damages alleged in the Complaint were caused by the culpable conduct of anyone other than the Plaintiffs and/or the decedent, such damages will have been caused and brought about by the culpable conduct of persons other than this Defendant.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

13. Pursuant to Section 15-108 of the New York General Obligations Laws, the Plaintiffs' recovery, if any, from this Defendant must be reduced by the greatest of (1) any amounts actually paid by any person or entity for any of the injuries, costs, damages and expenses alleged in the Complaint; or (2) any amounts stipulated or otherwise agreed to in any release of or covenant not to sue any person or entity for any injuries, costs, damages or expenses alleged in the Complaint; or (3) the equitable share of the liability of any person or entity that has received, or hereafter receives, any release from liability or covenant not to sue with respect to any of the injuries, costs, damages and expenses alleged in the complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

14. The Defendant alleges upon information and belief that the Public Health Law, particularly Section 2805(d), Subdivision 4, is a complete defense to any cause of action contained in the Plaintiffs' Complaint based upon alleged lack of informed consent.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

15. That in the event that the injuries and damages alleged herein, if any, were caused solely by the separate and independent culpable or other tortious conduct of the Plaintiffs, decedent, or other parties, third persons and/or entities over whom and over which this Defendant exercised no supervision or control, this Defendant should be entitled to contribution and/or indemnification.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

16. The Plaintiffs have failed to obtain personal jurisdiction over this Defendant.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

17. The Plaintiffs have failed to commence this action within the applicable Statute of Limitations and it is therefore barred.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

AND BY WAY OF CROSS-CLAIM

18. That the relative culpability of each defendant who is or may be liable for the damages alleged by the plaintiff in this action should be determined in accordance with Article 14 of the Civil Practice Law and Rules, and the equitable share of each defendant liable for contribution should be determined in accordance with the relative culpability of each such person, if any. Furthermore, in the alternative, this answering defendant should be completely indemnified by the co-defendants in the event that this defendant is found to be liable to the Plaintiffs.

WHEREFORE, the Defendant, **KATHARINE MORRISON, M.D.**, demands judgment:

1. Dismissing the Complaint herein;
2. That the Plaintiffs' damages be diminished in the proportion to which the culpable conduct and contributory negligence attributed to the Plaintiffs and/or decedent bears to the culpable conduct and contributory negligence which caused such damages;
3. That the equitable share of each person liable for contribution be determined and apportioned in accordance with the relative culpability of each such person, if any, pursuant to Article 14 of the CPLR, if applicable;
4. The costs and disbursements of this action; and
5. For such other and further relief which the Court deems just and proper.

Dated: December 29, 2016



James E. Eagan, Esq.
FELDMAN KIEFFER, LLP
Attorneys for Defendants
Katharine V. Morrison, M.D.,
Buffalo Womenservices, LLC, and
Buffalo GYN Womenservices, Inc.
110 Pearl Street, Suite 400
Buffalo, New York 14202
(716) 852-5875

To: Patrick Maloney, Esq.
Dempsey & Dempsey
Attorneys for Plaintiff
561 Franklin Street
Buffalo, New York 14202
(716) 885-8645

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER, as Administratrix,
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KATHARINE V. MORRISON, MD,
BUFFALO WOMENSERVICES, LLC,
BUFFALO GYN WOMENSERVICES, INC., and
GINA VARNEY d/b/a BUFFALO DOULA COLLECTIVE,

Defendants.

ANSWER

Defendant, Gina Varney d/b/a Buffalo Doula Collective, by its attorneys,
Rupp Baase Pfalzgraf Cunningham LLC, as and for its answer to plaintiffs' complaint, alleges
upon information and belief as follows:

1. Admits each and every allegation contained in paragraph 8 of the
complaint and those same allegations as repeated and realleged therein.
2. Denies each and every allegation contained in paragraphs 9, 10, 11, 13,
15, 17, and 19 of the complaint and those same allegations as repeated and realleged therein.

3. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, and 7 of the complaint and those same allegations as repeated and realleged therein.

4. Denies each and every allegation in the complaint not previously admitted, denied, or otherwise controverted.

FIRST AFFIRMATIVE DEFENSE

5. The complaint fails to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

6. Plaintiffs have failed to mitigate their damages.

THIRD AFFIRMATIVE DEFENSE

7. Plaintiffs' action is barred by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

8. The plaintiffs have failed to obtain personal jurisdiction over this defendant.

FIFTH AFFIRMATIVE DEFENSE

9. Plaintiffs' recovery, if any, should be barred or reduced in the proportion of plaintiffs' culpable conduct, including contributory negligence or assumption of risk, bears to the total culpable conduct found to have caused the plaintiffs' damages.

SIXTH AFFIRMATIVE DEFENSE

10. The damages alleged in the complaint were caused or contributed to by culpable conduct attributable to others over which or whom this defendant neither had, nor exercised, any control.

SEVENTH AFFIRMATIVE DEFENSE

11. If this defendant is found liable for the injuries sustained by the plaintiffs, any liability shall be limited to this defendant's equitable share of total liability as provided by CPLR Article 16.

EIGHTH AFFIRMATIVE DEFENSE

12. This defendant is entitled to the protections under General Obligations Law 15-108. In the event that plaintiffs settle or settled the claim against one or more joint tortfeasors, this answering defendant reserves the right to assert an offset pursuant to § 15-108 of the General Obligation Law.

NINTH AFFIRMATIVE DEFENSE

13. Upon information and belief, all or part of plaintiffs' damages may have been paid, replaced, or indemnified in whole or in part from collateral sources, or with reasonable certainty, will be replaced or indemnified in the future from such collateral sources. To that extent, the defendant requests that in the event that the plaintiffs recover any judgment, such amounts that have been or may be recovered in whole or in part from collateral sources be determined by the court and that the amount of plaintiffs' recovery be reduced by this amount.

**TENTH AFFIRMATIVE DEFENSE AND
CROSS-CLAIM AGAINST CO-DEFENDANTS**

14. That the relative culpability of each defendant who is or may be liable for the damages alleged by the plaintiffs in this action should be determined in accordance with CPLR Article 14, and the equitable share of each defendant liable for contribution should be determined in accordance with the relative culpability of each such person, if any. Furthermore, in the alternative, the defendant, Gina Varney d/b/a Buffalo Doula Collective, should be completely indemnified by the co-defendants in the event the answering defendant is found to be liable to the plaintiffs.

WHEREFORE, defendant demands judgment dismissing the complaint together with the costs and disbursements of this action and such other and further relief as the court deems just and proper.

Dated: November 7, 2017
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC

Attorneys for Defendant

Gina Varney d/b/a Buffalo Doula Collective

By: _____

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TO: DEMPSEY & DEMPSEY
Attorneys for Plaintiffs
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Buffalo, New York 14202
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
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EILEEN STEWART, MS, CNM, CPM,
BUFFALO MIDWIFERY SERVICES PLLC,
KATHARINE V. MORRISON, M.D.,
BUFFALO WOMENSERVICES, LLC,
BUFFALO GYN WOMENSERVICES, INC.,
GINA VARNEY
d/b/a BUFFALO DOULA COLLECTIVE

Defendants.

**STIPULATION OF
DISCONTINUANCE**

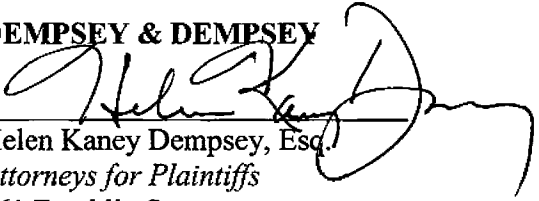
Index No.: ~~813223~~/2016

813232/2016

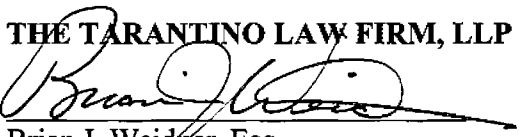
IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned attorneys of record for the parties to the above-entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action is hereby discontinued, on the merits with prejudice and without costs to any party as against the other. This Stipulation of Discontinuance shall also apply to the wrongful death cause of action with the Court's permission, without a Court Order approving the settlement or distribution of the settlement proceeds. This stipulation may be filed without further notice with the Clerk of the Court.

Dated: Buffalo, New York
July 20, 2018

DEMPSEY & DEMPSEY


Helen Kaney Dempsey, Esq.
Attorneys for Plaintiffs
561 Franklin Street
Buffalo, New York 14202
(716) 885-8645

THE TARANTINO LAW FIRM, LLP

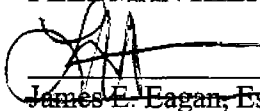

Brian J. Weidner, Esq.
Attorneys for Defendants
Eileen Stewart, MS, CNM, CPM and
Buffalo Midwifery Services, PLLC
14 Lafayette Square
1500 Rand Building
Buffalo, New York 14202
(716) 849-6500

STIPULATION OF DISCONTINUANCE

Binder v. Stewart, et al.

Page 2 of 2

FELDMAN KIEFFER, LLP



~~James E. Eagan, Esq.~~ Lauren Heimer, Esq.

Attorneys for Defendant

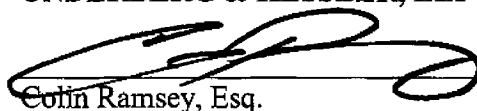
Kathleen V. Morrison, M.D.

110 Pearl Street, Suite 400

Buffalo, New York 14202

(716) 852-5875

UNDERBERG & KESSLER, LLP



Colin Ramsey, Esq.

Attorneys for Defendants

Buffalo Womenservices, LLC and

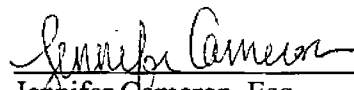
Buffalo GYN Womenservices, Inc.

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Buffalo, New York 14202

(716) 848-9000

**RUPP BAASE PFALZGRAF CUNNINGHAM,
LLC**



Jennifer Cameron, Esq.

Attorneys for Defendant

Gina Varney d/b/a Buffalo Doula Collective

1600 Liberty Building

Buffalo, New York 14202

(716) 854-3400

SO ORDERED,

Hon. Frederick J. Marshall, J.S.C.

Date: July ___, 2018

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER as Administratrix,
MOLLIE BINDER and NATHAN BINDER,

Plaintiffs,

vs.

ANSWER

Index No.: 813232/2016

EILEEN STEWART, MS, CNM, CPM,
BUFFALO MIDWIFERY SERVICES, PLLC,
KATHARINE V. MORRISON, MD,
BUFFALO WOMENSERVICES, LLC,
BUFFALO GYN WOMENSERVICES, INC., and
GINA VARNEY d/b/a BUFFALO DOULA COLLECTIVE,

Defendants.

Defendants, EILEEN STEWART, MS, CNM, CPM and BUFFALO MIDWIFERY SERVICES, PLLC, by their attorneys, THE TARANTINO LAW FIRM, LLP, for their answer to the complaint herein, allege as follows upon information and belief:

FIRST: Admit so much of paragraph 8 of the plaintiffs' complaint as same alleges that Gina Varney is a doula but deny knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph.

SECOND: Admit the allegations contained in paragraphs 3, 4, 5 and 9 of plaintiffs' complaint.

THIRD: Deny so much of paragraph 13 of the plaintiffs' complaint as same alleges that the death of "Baby Binder" was due to the negligence of the answering defendants or that said answering defendants caused Mollie or Nathan Binder to have suffered damages for the "wrongful death" of Baby Binder. These answering defendants deny knowledge or information sufficient to form a belief as to the allegations made in said paragraph as to the co-defendants.

FOURTH: Deny so much of paragraph 15 of the plaintiffs' complaint as same alleges that Mollie and Nathan Binder have been deprived of the comfort, society, services and companionship of their son and have suffered damages of a derivative nature due to the negligence of the answering defendants but deny knowledge or information sufficient to form a belief as to the co-defendants.

FIFTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 2, 6 and 7 of plaintiffs' complaint.

SIXTH: Deny the allegations contained in paragraphs 10, 11, 17 and 19 of plaintiffs' complaint as they may pertain to the answering defendants, but deny knowledge or information sufficient to form a belief as to the remaining allegations of said paragraphs as they pertain to the co-defendants.

SEVENTH: Repeat and reallege the admissions and denials as they relate to paragraphs 1 through 17 of plaintiffs' complaint, as realleged in paragraphs 12, 14, 16 and 18 of plaintiffs' complaint with the same force and effect as if fully set forth herein.

EIGHTH: Deny each and every other allegation contained in plaintiffs' complaint except as the same may be otherwise admitted herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

NINTH: To the extent that plaintiffs' alleged injuries and damages were caused or contributed to by the negligence on the part of others, these answering defendants are not liable.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

TENTH: Upon trial, it may appear that some or all of the damages claimed by plaintiff was brought about or contributed to by reason of plaintiff's own acts, physical condition,

disease or illness, actions, negligence, and/or assumption of risk; if so, plaintiff's damages, if any, must be diminished accordingly.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

ELEVENTH: In the event that the plaintiffs recover damages in this action which have been paid or are payable by a collateral source, the answering defendants will seek a collateral source offset pursuant to Article 45 of the CPLR.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

TWELFTH: In the event that the plaintiffs give a release or a covenant not to sue or not to enforce a judgment to one or more persons claimed to be liable for the same injury alleged in the plaintiffs' complaint, the answering defendants will seek an offset pursuant to §15-108 of the General Obligations Law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

THIRTEENTH: The answering defendants deny any liability on their part, but if they are found liable to the plaintiffs, then such liability is limited by CPLR 1601, *et seq.*

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

FOURTEENTH: The plaintiffs' complaint should be dismissed for failure to file and serve a certificate of merit as required by CPLR 3012-a.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

FIFTEENTH: Upon information and belief, the plaintiffs lack the capacity to sue this action.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

SIXTEENTH: The answering defendants reserve the right to amend this answer and to assert additional defenses upon ascertaining more definite facts during and upon completion of discovery and investigation.

**THE DEFENDANTS, EILEEN STEWART, MS, CNM, CPM and
BUFFALO MIDWIFERY SERVICES, PLLC, AS A CROSS-CLAIM
ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:**

SEVENTEENTH: That the relative culpability of each defendant who is or may be liable for the damages alleged by the plaintiffs in this action should be determined in accordance with Article 14 of the CPLR, and the equitable share of each defendant liable for contribution should be determined in accordance with the relative culpability of each such person, if any; furthermore, in the alternative, the defendants, EILEEN STEWART, MS, CNM, CPM and BUFFALO MIDWIFERY SERVICES, PLLC, should be completely indemnified by the proper co-defendant or co-defendants in the event they are found to be liable to plaintiffs.

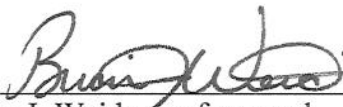
WHEREFORE, defendants, EILEEN STEWART, MS, CNM, CPM and BUFFALO MIDWIFERY SERVICES, PLLC, demand judgment as follows:

1. Dismissing the complaint herein;
2. That the plaintiffs' damages be diminished in the proportion which the culpable conduct attributable to the plaintiffs bear to the culpable conduct which caused the damages;
3. In the event plaintiffs recover a verdict herein, that the court apportion the various culpability of the defendants between them pursuant to Article 14 of the CPLR or that the answering defendants should be completely indemnified by the co-defendants; and

4. For such other, further and different relief as may seem just, equitable and proper, together with the costs and disbursements of this action.

Dated: Buffalo, New York
January 27, 2017

THE TARANTINO LAW FIRM, LLP

By: 

Brian J. Weidner, of counsel
Attorneys for Defendants
Eileen Stewart, MS, CNM, CPM and
Buffalo Midwifery Services, PLLC
1500 Rand Building
14 Lafayette Square
Buffalo, New York 14203
(716) 849-6500

TO: Catherine Dempsey, Esq.
DEMPSEY & DEMPSEY
Attorneys for Plaintiffs
561 Franklin Street
Buffalo, New York 14202
(716) 885-8645

cc: James E. Eagan, Esq.
FELDMAN KIEFFER, LLP
Attorneys for Co-Defendants
Katharine V. Morrison, M.D., Buffalo Womenservices, LLC
and Buffalo GYN Womenservices, Inc.
110 Pearl Street, Suite 400
Buffalo, New York 14202
(716) 852-5875

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER, as Administratrix,
MOLLIE BINDER, and
NATHAN BINDER

ANSWER

Plaintiff,

vs.

Index No.: 813232/2016

EILEEN STEWART, MS, CNM, CPM,
BUFFALO MIDWIFERY SERVICES, PLLC,
KATHARINE V. MORRISON, M.D.,
BUFFALO WOMENSERVICES LLC,
BUFFALO GYN WOMENSERVICES, INC., and
GINA VARNEY d/b/a BUFFALO DOULA COLLECTIVE,

Defendants.

Defendant, **BUFFALO GYN WOMENSERVICES, INC.**, by its attorneys, Feldman Kieffer, LLP, as and for an Answer to the Plaintiffs' Complaint, alleges upon information and belief, as follows:

1. Admits the allegations contained in paragraphs 5, 6, and 7 of the Complaint.
2. Denies the allegations contained in paragraphs 9, 10, 11, 13, 15, 17, and 19 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 2, 3, 4, and 8 of the Complaint, and therefore denies the same.
4. In response to paragraphs 12, 14, 16, and 18 of the Complaint, repeats and realleges each and every response hereto, as if fully set forth herein.
5. Denies each and every other remaining allegation in the Complaint not hereinbefore

specifically admitted or otherwise denied.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. The Complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. The recoverable damages, if any, should be diminished to the extent the Plaintiffs or decedent may have failed to mitigate their damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Liability for non-economic loss is limited by the provisions of Article 16 of the New York CPLR.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. All or part of the cost of the Plaintiffs' or decedent's medical care, loss of earnings or other economic loss may have been paid, replaced or indemnified in whole or in part from collateral sources or with reasonable certainty, will be replaced or indemnified in the future from such collateral sources and to that extent, this Defendant requests that in the event the Plaintiffs recover any judgment herein, that such amounts as have been or may be recovered in whole or in part from collateral sources be determined by the court and the amounts the Plaintiffs recover be reduced by said amounts.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. That the injuries as alleged in the Complaint were caused in whole or in part or were contributed to by the culpable conduct of the Plaintiffs and/or decedent and without any intent, negligence, fault or want of care on the part of this Defendant, and that the damages are to be diminished by the portion of culpable conduct attributable to the Plaintiffs and/or the decedent.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. Should it be held that Article 14 of the New York CPLR could apply to any claim being made by the Plaintiffs herein, the Defendant requests that the relative culpability of each person who is or may be liable to contribute to any liability for the damages alleged by the Plaintiffs in this action should be determined in accordance with the decisional and statutory law of the State of New York, in such cases made and provided; and the equitable share of each person liable for contribution should be determined and apportioned in accordance with the relative culpability of each such person, if any, pursuant to Article 14 of the New York CPLR.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. That in the event that the injuries and damages alleged in the Complaint were caused by the culpable conduct of anyone other than the Plaintiffs and/or the decedent, such damages will have been caused and brought about by the culpable conduct of persons other than this Defendant.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

13. Pursuant to Section 15-108 of the New York General Obligations Laws, the Plaintiffs' recovery, if any, from this Defendant must be reduced by the greatest of (1) any amounts actually paid by any person or entity for any of the injuries, costs, damages and expenses alleged in the Complaint; or (2) any amounts stipulated or otherwise agreed to in any release of or covenant not to sue any person or entity for any injuries, costs, damages or expenses alleged in the Complaint; or (3) the equitable share of the liability of any person or entity that has received, or hereafter receives, any release from liability or covenant not to sue with respect to any of the injuries, costs, damages and expenses alleged in the complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

14. The Defendant alleges upon information and belief that the Public Health Law,

particularly Section 2805(d), Subdivision 4, is a complete defense to any cause of action contained in the Plaintiffs' Complaint based upon alleged lack of informed consent.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

15. That in the event that the injuries and damages alleged herein, if any, were caused solely by the separate and independent culpable or other tortious conduct of the Plaintiffs, decedent, or other parties, third persons and/or entities over whom and over which this Defendant exercised no supervision or control, this Defendant should be entitled to contribution and/or indemnification.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

16. The Plaintiffs have failed to obtain personal jurisdiction over this Defendant.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

17. The Plaintiffs have failed to commence this action within the applicable Statute of Limitations and it is therefore barred.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

AND BY WAY OF CROSS-CLAIM

18. That the relative culpability of each defendant who is or may be liable for the damages alleged by the plaintiff in this action should be determined in accordance with Article 14 of the Civil Practice Law and Rules, and the equitable share of each defendant liable for contribution should be determined in accordance with the relative culpability of each such person, if any. Furthermore, in the alternative, this answering defendant should be completely indemnified by the co-defendants in the event that this defendant is found to be liable to the Plaintiffs.

WHEREFORE, the Defendant, **BUFFALO GYN WOMENSERVICES, INC.**, demands judgment:

1. Dismissing the Complaint herein;
2. That the Plaintiffs' damages be diminished in the proportion to which the culpable conduct and contributory negligence attributed to the Plaintiffs and/or decedent bears to the culpable conduct and contributory negligence which caused such damages;
3. That the equitable share of each person liable for contribution be determined and apportioned in accordance with the relative culpability of each such person, if any, pursuant to Article 14 of the CPLR, if applicable;
4. The costs and disbursements of this action; and
5. For such other and further relief which the Court deems just and proper.

Dated: December 29, 2016



James E. Eagan, Esq.
FELDMAN KIEFFER, LLP
Attorneys for Defendants
Katharine V. Morrison, M.D.,
Buffalo Womenservices, LLC, and
Buffalo GYN Womenservices, Inc.
110 Pearl Street, Suite 400
Buffalo, New York 14202
(716) 852-5875

To: Patrick Maloney, Esq.
Dempsey & Dempsey
Attorneys for Plaintiff
561 Franklin Street

Buffalo, New York 14202
(716) 885-8645

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER, as Administratrix,
MOLLIE BINDER, and
NATHAN BINDER

ANSWER

Plaintiff,

vs.

Index No.: 813232/2016

EILEEN STEWART, MS, CNM, CPM,
BUFFALO MIDWIFERY SERVICES, PLLC,
KATHARINE V. MORRISON, M.D.,
BUFFALO WOMENSERVICES LLC,
BUFFALO GYN WOMENSERVICES, INC., and
GINA VARNEY d/b/a BUFFALO DOULA COLLECTIVE,

Defendants.

Defendant, **KATHARINE MORRISON, M.D.**, by her attorneys, Feldman Kieffer, LLP,
as and for an Answer to the Plaintiffs' Complaint, alleges upon information and belief, as follows:

1. Admits the allegations contained in paragraphs 5, 6, and 7 of the Complaint.
2. Denies the allegations contained in paragraphs 9, 10, 11, 13, 15, 17, and 19 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 2, 3, 4, and 8 of the Complaint, and therefore denies the same.
4. In response to paragraphs 12, 14, 16, and 18 of the Complaint, repeats and realleges each and every response hereto, as if fully set forth herein.
5. Denies each and every other remaining allegation in the Complaint not hereinbefore specifically admitted or otherwise denied.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. The Complaint fails to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. The recoverable damages, if any, should be diminished to the extent the Plaintiffs or decedent may have failed to mitigate their damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Liability for non-economic loss is limited by the provisions of Article 16 of the New York CPLR.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. All or part of the cost of the Plaintiffs' or decedent's medical care, loss of earnings or other economic loss may have been paid, replaced or indemnified in whole or in part from collateral sources or with reasonable certainty, will be replaced or indemnified in the future from such collateral sources and to that extent, this Defendant requests that in the event the Plaintiffs recover any judgment herein, that such amounts as have been or may be recovered in whole or in part from collateral sources be determined by the court and the amounts the Plaintiffs recover be reduced by said amounts.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. That the injuries as alleged in the Complaint were caused in whole or in part or were contributed to by the culpable conduct of the Plaintiffs and/or decedent and without any intent, negligence, fault or want of care on the part of this Defendant, and that the damages are to be diminished by the portion of culpable conduct attributable to the Plaintiffs and/or the decedent.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. Should it be held that Article 14 of the New York CPLR could apply to any claim

being made by the Plaintiffs herein, the Defendant requests that the relative culpability of each person who is or may be liable to contribute to any liability for the damages alleged by the Plaintiffs in this action should be determined in accordance with the decisional and statutory law of the State of New York, in such cases made and provided; and the equitable share of each person liable for contribution should be determined and apportioned in accordance with the relative culpability of each such person, if any, pursuant to Article 14 of the New York CPLR.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. That in the event that the injuries and damages alleged in the Complaint were caused by the culpable conduct of anyone other than the Plaintiffs and/or the decedent, such damages will have been caused and brought about by the culpable conduct of persons other than this Defendant.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

13. Pursuant to Section 15-108 of the New York General Obligations Laws, the Plaintiffs' recovery, if any, from this Defendant must be reduced by the greatest of (1) any amounts actually paid by any person or entity for any of the injuries, costs, damages and expenses alleged in the Complaint; or (2) any amounts stipulated or otherwise agreed to in any release of or covenant not to sue any person or entity for any injuries, costs, damages or expenses alleged in the Complaint; or (3) the equitable share of the liability of any person or entity that has received, or hereafter receives, any release from liability or covenant not to sue with respect to any of the injuries, costs, damages and expenses alleged in the complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

14. The Defendant alleges upon information and belief that the Public Health Law, particularly Section 2805(d), Subdivision 4, is a complete defense to any cause of action contained in the Plaintiffs' Complaint based upon alleged lack of informed consent.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

15. That in the event that the injuries and damages alleged herein, if any, were caused solely by the separate and independent culpable or other tortious conduct of the Plaintiffs, decedent, or other parties, third persons and/or entities over whom and over which this Defendant exercised no supervision or control, this Defendant should be entitled to contribution and/or indemnification.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

16. The Plaintiffs have failed to obtain personal jurisdiction over this Defendant.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

17. The Plaintiffs have failed to commence this action within the applicable Statute of Limitations and it is therefore barred.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

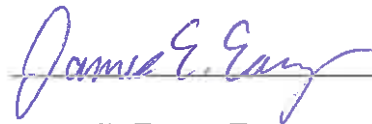
AND BY WAY OF CROSS-CLAIM

18. That the relative culpability of each defendant who is or may be liable for the damages alleged by the plaintiff in this action should be determined in accordance with Article 14 of the Civil Practice Law and Rules, and the equitable share of each defendant liable for contribution should be determined in accordance with the relative culpability of each such person, if any. Furthermore, in the alternative, this answering defendant should be completely indemnified by the co-defendants in the event that this defendant is found to be liable to the Plaintiffs.

WHEREFORE, the Defendant, **KATHARINE MORRISON, M.D.**, demands judgment:

1. Dismissing the Complaint herein;
2. That the Plaintiffs' damages be diminished in the proportion to which the culpable conduct and contributory negligence attributed to the Plaintiffs and/or decedent bears to the culpable conduct and contributory negligence which caused such damages;
3. That the equitable share of each person liable for contribution be determined and apportioned in accordance with the relative culpability of each such person, if any, pursuant to Article 14 of the CPLR, if applicable;
4. The costs and disbursements of this action; and
5. For such other and further relief which the Court deems just and proper.

Dated: December 29, 2016



James E. Eagan, Esq.
FELDMAN KIEFFER, LLP
Attorneys for Defendants
Katharine V. Morrison, M.D.,
Buffalo Womenservices, LLC, and
Buffalo GYN Womenservices, Inc.
110 Pearl Street, Suite 400
Buffalo, New York 14202
(716) 852-5875

To: Patrick Maloney, Esq.
Dempsey & Dempsey
Attorneys for Plaintiff
561 Franklin Street
Buffalo, New York 14202
(716) 885-8645

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ESTATE OF BABY BINDER, by and through
MOLLIE BINDER, as Administratrix,
MOLLIE BINDER, and
NATHAN BINDER,

Plaintiffs,

v.

Index No.: 813232/2016

EILEEN STEWART, MS, CNM, CPM,
BUFFALO MIDWIFERY SERVICES, PLLC,
KATHARINE V. MORRISON, MD,
BUFFALO WOMENSERVICES, LLC,
BUFFALO GYN WOMENSERVICES, INC., and
GINA VARNEY d/b/a BUFFALO DOULA COLLECTIVE,

Defendants.

ANSWER

Defendant, Gina Varney d/b/a Buffalo Doula Collective, by its attorneys,
Rupp Baase Pfalzgraf Cunningham LLC, as and for its answer to plaintiffs' complaint, alleges
upon information and belief as follows:

1. Admits each and every allegation contained in paragraph 8 of the
complaint and those same allegations as repeated and realleged therein.
2. Denies each and every allegation contained in paragraphs 9, 10, 11, 13,
15, 17, and 19 of the complaint and those same allegations as repeated and realleged therein.

3. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, and 7 of the complaint and those same allegations as repeated and realleged therein.

4. Denies each and every allegation in the complaint not previously admitted, denied, or otherwise controverted.

FIRST AFFIRMATIVE DEFENSE

5. The complaint fails to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

6. Plaintiffs have failed to mitigate their damages.

THIRD AFFIRMATIVE DEFENSE

7. Plaintiffs' action is barred by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

8. The plaintiffs have failed to obtain personal jurisdiction over this defendant.

FIFTH AFFIRMATIVE DEFENSE

9. Plaintiffs' recovery, if any, should be barred or reduced in the proportion of plaintiffs' culpable conduct, including contributory negligence or assumption of risk, bears to the total culpable conduct found to have caused the plaintiffs' damages.

SIXTH AFFIRMATIVE DEFENSE

10. The damages alleged in the complaint were caused or contributed to by culpable conduct attributable to others over which or whom this defendant neither had, nor exercised, any control.

SEVENTH AFFIRMATIVE DEFENSE

11. If this defendant is found liable for the injuries sustained by the plaintiffs, any liability shall be limited to this defendant's equitable share of total liability as provided by CPLR Article 16.

EIGHTH AFFIRMATIVE DEFENSE

12. This defendant is entitled to the protections under General Obligations Law 15-108. In the event that plaintiffs settle or settled the claim against one or more joint tortfeasors, this answering defendant reserves the right to assert an offset pursuant to § 15-108 of the General Obligation Law.

NINTH AFFIRMATIVE DEFENSE

13. Upon information and belief, all or part of plaintiffs' damages may have been paid, replaced, or indemnified in whole or in part from collateral sources, or with reasonable certainty, will be replaced or indemnified in the future from such collateral sources. To that extent, the defendant requests that in the event that the plaintiffs recover any judgment, such amounts that have been or may be recovered in whole or in part from collateral sources be determined by the court and that the amount of plaintiffs' recovery be reduced by this amount.

**TENTH AFFIRMATIVE DEFENSE AND
CROSS-CLAIM AGAINST CO-DEFENDANTS**

14. That the relative culpability of each defendant who is or may be liable for the damages alleged by the plaintiffs in this action should be determined in accordance with CPLR Article 14, and the equitable share of each defendant liable for contribution should be determined in accordance with the relative culpability of each such person, if any. Furthermore, in the alternative, the defendant, Gina Varney d/b/a Buffalo Doula Collective, should be completely indemnified by the co-defendants in the event the answering defendant is found to be liable to the plaintiffs.

WHEREFORE, defendant demands judgment dismissing the complaint together with the costs and disbursements of this action and such other and further relief as the court deems just and proper.

Dated: November 7, 2017
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC

Attorneys for Defendant

Gina Varney d/b/a Buffalo Doula Collective

By: _____

R. Anthony Rupp III
1600 Liberty Building
Buffalo, New York 14202-3502
(716) 854-3400

TO: DEMPSEY & DEMPSEY
Attorneys for Plaintiffs
Catherine B. Dempsey, Esq.
561 Franklin Street
Buffalo, New York 14202
(716) 885-8645